IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.75 OF 1996

The State of Maharashtra
(At the instance of Food Inspector,
Mumbai.) ... Appellant

Vs.

Jayantilal H. Veera ... Respondent

Ms. M.M. Deshmukh, A.P.P. for the State.

Mr. K.H. Parekh for the respondent.

CORAM : SMT. RANJANA DESAI, J.

DATED : 17TH SEPTEMBER, 2007.

ORAL JUDGEMENT:-

1. In this appeal, the State of Maharashtra has challenged judgment and order dated 15/9/1995 passed by the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Bombay, in Case No.65/S/1991. By the impugned judgment and order, the learned Magistrate has acquitted the respondent/accused of the charges under

section 7(i) read with section 2(ia)(a) and 2(ia)(m) and section 7(v) of the Prevention of Food Adulteration Act, 1954 (for short, "the said Act") read with section 50 of the Prevention of Food Adulteration Rules, 1955 (for short, "the said Rules of 1955") and read with Rule 5 of the Maharashtra Prevention of Food Adulteration Rules, 1962 (for short, "the said Rules of 1962") punishable under section 16 of the said Act.

2. The case of the complainant - S.G. Kubde, Food Inspector, as evident from the complaint and his deposition is that he is a Food Inspector duly appointed under section 9 of the said Act. On 25/1/1991, in pursuance of his duty, he visited shop premises of the accused being M/s. Veera General Stores situated at Borivali. He took inspection of the said shop premises. He found that refined groundnut oil in unlabelled tin of capacity of 15 kgs. was exhibited for sale. The complainant disclosed his identity and purchased 450 gms. of refined groundnut oil and paid Rs.39.60 to the accused as cost of the sample. The accused passed receipt

for the same. The complainant also gave notice to the accused in Form No.6 as well as under section 14(A) of the said Act. According to him, the said sample was divided in three equal parts and each was put in clean dry and empty glass bottles and the same were wrapped separately with brown paper and after pasting label of Local Health Authority each sample was sealed as per procedure. The complainant prepared panchanama and left the spot.

3. On the next working day i.e. on 28/1/1991, the complainant sent one sealed part of sample to the Public Analyst. He sent two parts of sample to the Local Health Authority along with Form No.7 and intimation was given to the Local Health Authority separately. In due course, the complainant received the Public Analyst's report showing that the sample of refined groundnut oil did not conform to the test as laid down under the said Rules. He, therefore, placed the papers before the Joint Commissioner, Food & Drug Department for obtaining sanction. After obtaining sanction, he filed the instant complaint. The Local Health

Authority sent Public Analyst's report to the accused as required under section 13(2) of the said Act. After all the formalities were complied with, summons came to be issued to the accused.

4. Particulars of the offence were explained to the accused. He pleaded not guilty to the charge. The defence of the accused was one of denial. It was urged on behalf of the accused that there was a breach of mandatory rules and, hence, the accused deserves to be acquitted.

5. In support of his case, the complainant PW-2 Shyamsunder Kudbe examined himself. He also examined PW-4 Dinesh Thakkar, the panch witness. PW-1 Ravindra Gosavi who was a clerk in the office of the Local Health Authority and PW-3 Shaikh Ahmad, who was at the relevant time working as the Public Analyst were also examined.

6. After perusing the evidence on record, the learned Magistrate was of the view that the accused deserves to be

acquitted as there was a breach of mandatory provision contained in section 11(1)(c)(i) of the said Act.

7. I have heard Ms. Deshmukh, the learned A.P.P. appearing for the State and Mr. Parekh, the learned counsel appearing for the respondent/accused.

8. Before I deal with the merits of the case, it is necessary to bear in mind that this is an appeal against an order of acquittal. It is well settled that if the view taken by the trial court is a reasonably possible view and the judgment of the trial court is not perverse, the superior court should not interfere with it in an appeal against acquittal by substituting its own view for it. In ***State of Rajasthan v. Raja Ram, (2003) 8 SCC 180***, while dealing with an appeal against acquittal, the Supreme Court has observed that generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court has further observed that the golden thread which runs through

the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Supreme Court has further clarified that the principle to be followed by the appellate court while considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference not otherwise. Keeping these principles in mind, I will approach the present appeal.

9. Section 11(1)(c)(i) reads as under :

> "11. Procedure to be followed by food inspectors. - (1) When a food inspector takes a sample of food for analysis, he shall -
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx

> (c)(i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and"

10. It is an admitted position that the office of the Local Health Authority has not received separate intimation as contemplated under section 11(1)(c)(i) of the said Act. This position has been admitted by PW-1 Ravindra Gosavi. The law in this regard is well settled by the judgments of this court. In this behalf, the learned Magistrate has rightly placed reliance on the judgment of this court in ***State of Maharashtra v. Raghunath Hindurao Gajbar, 1984(I) FAC 226***. In that case while dealing with somewhat similar fact situation, this court held that the requirement that one of the three samples should be sent to the Public Analyst is coupled with the requirement that the intimation of the same should be sent to the Local Authority. This court further held that inasmuch as stiff penalty is provided if the sample is found adulterated, this provision must be held to be mandatory. The manner in which the penalty should be imposed has to be prescribed and once the legislature

prescribes such manner the same has got to be observed strictly by the person who has been entrusted with the duty of implementation of the law by paying attention to each of the mandatory requirements prescribed by the law. This court further observed that the legislature has not made the provision for intimation to the Local Authority of certain facts an empty formality. This court observed that once this requirement is held to be mandatory and once it is found that the requirement has not been complied with, then the prosecution must fail.

11. In this connection, I may also refer to yet another judgment of this court in ***State of Maharashtra v. Mohiddin Gaibi Chougule, 2001 (2) FCA 92***. In that case, this court was again dealing with section 11(1)(c)(i) of the said Act. The complaint as well as the evidence of the Food Inspector was silent on the question whether there was proper intimation to the Local Health Authority by the Food Inspector, after one part of the sample was sent to the Public Analyst, Kolhapur. This court observed that this silence is

very vocal. The requirement of giving proper intimation to the Local Health Authority by the Food Inspector after one part of the sample was sent to the Public Analyst was held to be a mandatory requirement. This court observed that there was non-compliance of the mandatory provision of section 11(1)(c)(i) of the said Act.

12. Once it is held that section 11(1)(c)(i) of the said Act is a mandatory requirement, its non compliance would be fatal to the prosecution. In my opinion, the learned Magistrate has, therefore, rightly acquitted the accused on the ground that there was a breach of mandatory provision of the said Act. The view taken by the learned Magistrate is the only possible view on the facts before him and it cannot be disturbed in this appeal against acquittal. The appeal is, therefore, dismissed.

[SMT. RANJANA DESAI, J.]